

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ALDRIN GUERRERO MUNOZ,

Case No. 14-CV-0792 (PJS/JJG)

Petitioner,

v.

ORDER ADOPTING REPORT AND
RECOMMENDATION

STATE OF MINNESOTA and
MICHELLE SMITH, Warden,

Respondents.

Aldrin Guerrero Munoz, pro se.

Anthony C. Palumbo and M. Katherine Doty, ANOKA COUNTY ATTORNEY'S
OFFICE, for respondents.

In 2005, petitioner Aldrin Guerrero Munoz entered an *Alford* plea to a charge of second-degree intentional murder in Minnesota state court. *See North Carolina v. Alford*, 400 U.S. 25 (1970). He was sentenced to a 390-month term of imprisonment. Munoz petitions the Court pursuant to 28 U.S.C. § 2254 for relief from that sentence. This matter is before the Court on Munoz's objection to the March 27, 2014 Report and Recommendation ("R&R") of Magistrate Judge Jeanne J. Graham. *See* ECF No. 11. In that R&R, Judge Graham recommends that Munoz's petition be dismissed as untimely. *See* 28 U.S.C. § 2244(d)(1)(A) (requiring that a petition for habeas relief be brought within one year of "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review").

The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court overrules Munoz's objection and adopts the R&R.

Only one matter merits comment: In his objection, Munoz continues to confuse the limitations period set by *state* law for *state*-court motions for post-conviction relief with the limitations period set by *federal* law for *federal*-court petitions for habeas relief. Munoz argues that his state-court motion for post-conviction relief was timely under Minnesota law. But even if Munoz is correct, this Court still cannot afford relief to Munoz on his habeas petition because, for the reasons explained by Judge Graham, *that* petition was not filed within the limitations period set by federal law. Accordingly, Munoz's petition must be dismissed.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court ADOPTS the March 27, 2014 R&R [ECF No. 11] and OVERRULES petitioner Aldrin Guerrero Munoz's objection [ECF No. 12]. Accordingly, IT IS HEREBY ORDERED THAT:

1. Munoz's petition for writ of habeas corpus [ECF No. 1] is DISMISSED WITH PREJUDICE.
2. Munoz's motion to appoint counsel [ECF No. 2] is DENIED AS MOOT.
3. No certificate of appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 21, 2014

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge